

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL F. CAPPETTE, M.D.,
on behalf of himself and other similarly
situated persons,

Plaintiff,

DECISION AND ORDER

12-CV-6306L

v.

SAGE, RUTTY AND COMPANY, INC.,
et al.,

Defendants.

Plaintiff, Michael F. Cappette, M.D., brought this action against Sage, Ruty and Company, Inc. ("Sage Ruty") and three individuals who are principals or employees of Sage Ruty. Plaintiff asserted claims under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, and New York law, seeking damages based on defendants' alleged failure to advise him of the risks associated with a certain investment.


Defendants moved to dismiss the complaint for failure to state a claim upon which relief can be granted. By letter to the Court dated January 8, 2013 (Dkt. #20), plaintiff's counsel states that plaintiff does not oppose defendants' motion. Accordingly, the motion to dismiss is granted, as set forth below.

CONCLUSION

Defendants' motion to dismiss the complaint (Dkt. #12) is granted. The first and second causes of action of the amended complaint (Dkt. #11), asserting claims under the RICO statute, are dismissed with prejudice. Plaintiff's third and fourth causes of action, asserting claims under New

York law, are dismissed for lack of subject matter jurisdiction, without prejudice to their refile in state court.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 14, 2013.